

No. 25-1404

In the Supreme Court of the United States

STANDWITHUS CENTER FOR LEGAL JUSTICE, ET AL.,
Petitioners,
v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the First Circuit

**BRIEF *AMICUS CURIAE* OF
THE AMERICAN CENTER FOR LAW AND JUSTICE
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS¹

The American Center for Law and Justice (“ACLJ”) is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of religious liberty. The ACLJ has appeared before this Court in many cases advocating for the freedoms of religious groups and individuals, as counsel for a party, *e.g.*, *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990), or for amicus, *e.g.*, *Carson v. Makin*, 596 U.S. 767 (2022); *City of Boerne v. Flores*, 521 U.S. 507 (1997).

The ACLJ has dedicated time and effort to eradicating antisemitism and defending Jewish students’ constitutionally and federally protected rights at numerous schools and universities around the country. We write this brief to address the significant and severe consequences that the First Circuit’s recent decision creates for not only Jewish students, but any minority group. The First Circuit’s harmful decision now (1) provides colleges and universities with a roadmap to evade their Title VI obligations through delayed and inadequate responses to known discrimination and (2) enables perpetrators to disguise conduct that would otherwise constitute actionable harassment or discrimination as

¹ Pursuant to Supreme Court Rule 37.2, amicus states that all parties have been given timely notice of this amicus brief. Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

political speech, a result made possible only by the First Circuit's erroneous First Amendment analysis.

SUMMARY OF ARGUMENT

The decision below substantially weakens the protections Congress enacted through Title VI of the Civil Rights Act of 1964 ("Title VI"). The First Circuit held that a university's response to harassment and discrimination may be sufficient even when it fails to remedy the underlying hostile environment and discrimination. Pet'rs' App. 35a-39a. By permitting a federally funded university to avoid liability through delayed, ineffective, and cursory measures while a hostile educational environment persisted, the First Circuit effectively reduced Title VI's deliberate-indifference standard to a requirement that institutions merely appear to respond to discrimination. If allowed to stand, the decision below provides educational institutions with a blueprint for evading their statutory obligations while minority students continue to experience exclusion, intimidation, and unequal access to educational opportunities.

Moreover, the decision below collapses the distinction between protected political expression and discriminatory conduct. The First Amendment unquestionably protects debate on matters of public concern. It does not, however, immunize conduct that targets students because of their race, ethnicity, ancestry, or national origin. Nor does it relieve federally funded institutions of their duty to address conduct that creates a hostile educational environment. By treating conduct directed at Jewish

students as protected political advocacy merely because the perpetrators invoked a political cause, the decision below creates a framework that can be used to shield discriminatory conduct against any protected group.

The implications extend far beyond this case. Under the reasoning below, institutions may satisfy Title VI through nominal actions that fail to remedy discrimination, while perpetrators avoid scrutiny by characterizing exclusionary or harassing conduct as political expression. Such a ruling threatens the rights of all students protected by Title VI and undermines Congress's promise that federal funds will not subsidize discrimination.

This Court's review is warranted to clarify the obligations of federally funded educational institutions, preserve the distinction between protected speech and actionable discrimination, and ensure that Title VI remains an effective safeguard against hostile educational environments based on race, ethnicity, ancestry, or national origin.

ARGUMENT

I. Universities can now avoid liability under Title VI through minimal, inadequate responses.

Title VI embodies the fundamental promise that federal funds will not support racial discrimination in any form. In calling for Title VI's enactment, President John F. Kennedy accentuated this promise, stating, "[s]imple justice requires that public funds . . . not be spent in any fashion which encourages,

entrenches, subsidizes, or results in racial discrimination.” H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963). The First Circuit’s decision frustrates Title VI’s core guarantee by reducing a right secured by law to a discretionary preference, allowing universities to evade their obligations through minimal, ineffective responses while discrimination and hostile environments persist.

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. This duty most certainly encompasses the duty to protect students from a hostile educational environment. As the Department of Justice has articulated, federal law prohibits discrimination against a student’s “residency in a country whose residents share a dominant religion or a distinct religious identity.” Letter from Thomas E. Perez, U.S. Assistant Att’y Gen., to Russlynn H. Ali, Assistant Sec’y for C.R. (Sept. 8, 2010).

Executive Order 13899, issued on December 11, 2019, codified longstanding policies and directed all agencies to consider the International Holocaust Remembrance Alliance’s (IHRA) definition of “antisemitism” when enforcing Title VI. Exec. Order No. 13,899, 84 Fed. Reg. 68,779 (Dec. 11, 2019). That definition states, “[a]ntisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward

Jewish community institutions and religious facilities.” Just last year, Executive Order 13899 was reaffirmed by the current administration in Executive Order 14188, titled “Additional Measures to Combat Anti-Semitism.” Exec. Order No. 14,188, 90 Fed. Reg. 8847 (Jan. 29, 2025).

This Court has held that Jews are protected from racial discrimination under 42 U.S.C. § 1982, as they were among the groups that Congress understood to constitute distinct “races” at the time the statute was enacted. *See Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987). Indeed, Federal courts have long recognized Jews as protected from discrimination based on shared ancestry or ethnic characteristics under statutes prohibiting racial discrimination, such as 42 U.S.C. § 1982, *id.*, and have followed *Shaare Tefila* in applying Title VI to antisemitism. *See, e.g., T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 354 (S.D.N.Y. 2014); *Yakoby v. Trs. of the Univ. of Pa.*, No. 23-4789, 2025 U.S. Dist. LEXIS, at 15-16 (E.D. Pa. June 2, 2025). Thus, discriminating against or harassing a Jewish student because of a real or perceived connection to Israel is antisemitic and is prohibited discriminatory action. This Court emphasized that “Congress modeled Title IX after Title VI of the Civil Rights Act of 1964, and passed Title IX with the explicit understanding that it would be interpreted as Title VI was.” *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009) (citing *Cannon v. Univ. of Chi.*, 441 U.S. 677, 694-95 (1979)). Title VI protection covers students who are or are perceived to be Jewish, Christian, Muslim, Sikh, Hindu, Buddhist, or other groups that are or are perceived to: 1) “share[] ancestry or ethnic

characteristics”; or 2) have “citizenship or residency in a country with a dominant religion or distinct religious identity.”² “Title VI prohibits discrimination based on race, color, or national origin against students of any religion . . . when the discrimination, for example”:

- “involves racial, ethnic, or ancestral slurs or stereotypes”;
- is based on a student’s “skin color, physical features, or style of dress that reflects both ethnic and religious traditions”; or
- is based on the country or region where a student is from or is perceived to have come from, including, for example, discrimination based on a student’s accent or name, a student’s limited English proficiency, or a student speaking a language other than English.³

Courts have accordingly recognized that the obligations imposed on universities under Title VI include an obligation to protect students from discrimination and harassment. A university violates its responsibilities under Title IX or Title VI when it acts with deliberate indifference to conduct that is “so severe, pervasive, and objectively offensive that it denies its victims the equal access to education.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 652 (1999). Further, an educational institution can be held accountable “if it has effectively caused, encouraged, accepted, tolerated or failed to correct a

² See *Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics*, DEPT OF EDUC. (Jan. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>.

³ *Id.*

racially hostile environment.” U.S. DEP’T OF EDUC. Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994).

In this case, the First Circuit undermined the “deliberate indifference” standard and found MIT was not deliberately indifferent despite the university’s inadequate response to protests targeting Jewish students. For example, MIT allowed protesters to block Jewish students from accessing campus buildings and facilities. Pet’rs’ App. 12a. There was no question of the targeting of Jews as such. During these antisemitic uprisings on campus, protesters chanted “There is only one solution: Intifada revolution,” “Palestine will be free, from the river to sea”, “death to Zionism,” and “Palestine is free, Israel out.” First Am. Compl. ¶¶ 157, 317, *StandWithUs Ctr. for Legal Just. v. Mass. Inst. of Tech.*, No. 1:24-cv-10577 (D. Mass. May 30, 2024), ECF No. 40. These statements are inherently antisemitic and explicitly call for violence against Jews and the nation of Israel. *See id.* at ¶ 157 n. 96, 97.

It is important to address the meaning of “intifada” or “intifada revolution” and other similar statements that have recently been made or chanted by students on campuses across the United States, including at MIT. “Intifada” is an Arabic word that translates to “uprising,” “shaking off,” or “rebellion.”⁴ Historically, it is tied to periods of intense violence against Israel by the terrorist organization Hamas,⁵

⁴ Bader Araj et al., *Intifada, Palestinian-Israeli History*, BRITANNICA (Nov. 24, 2025), <https://www.britannica.com/topic/intifada>.

⁵ FOREIGN TERRORIST ORGANIZATIONS, BUREAU OF

including the intifada from 1987-1990 and again in 2000-2005. Acts of violence, or “intifada,” include attacks on innocent civilians via car bombs,⁶ suicide bombers,⁷ and bus attacks.⁸ Now, calls for “intifada” and to “globalize the intifada” are connected to anti-Israel groups that support violence against Israel and its supporters around the world. In fact, pro-Hamas groups have posted maps on social media of locations around the world, including locations in New York City, that they claim are associated with “genocide” in Gaza. Student groups that chant or post these phrases on college campuses are actively calling for violence against anyone who supports or is perceived to support Israel, including Jewish students on those same campuses. MIT’s Jewish students were specifically targeted for their Jewish identity and for their perceived connection with the State of Israel. This is antisemitism. Further, as the amended complaint in this case made crystal clear, “Zionism” is

COUNTERTERRORISM, U.S. DEP’T OF STATE, <https://www.state.gov/foreign-terrorist-organizations> (last visited Nov. 24, 2025).

⁶ David Hoffman, *8 Killed, 40 Injured in Car Bomb Blast at Israeli Bus Stop*, THE WASHINGTON POST (Apr. 6, 1994), <https://www.washingtonpost.com/archive/politics/1994/04/07/8-killed-40-injured-in-car-bomb-blast-at-israeli-bus-stop/6feb4aef-1e8f-4d32-bfe5-79bf5d468760/>; *Suicide and Other Bombing Attacks in Israel Since the Declaration of Principles (Sept 1993)*, MINISTRY OF FOREIGN AFFAIRS (Apr. 6, 1994), <https://www.gov.il/en/pages/suicide-and-other-bombing-attacks-since-the-declaration-of-principles>.

⁷ *Jerusalem Bombing*, NPR (Feb. 25, 1996, 12:00 AM), <https://www.npr.org/1996/02/25/1008898/jerusalem-bombing>.

⁸ Marjorie Miller & Mary Curtius, *20 Killed, 10 Injured in Jerusalem Bus Explosion*, LOS ANGELES TIMES (Mar. 3, 1996, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1996-03-03-mn-42559-story.html>.

not just a political viewpoint; for many Jews, “it is a key component of [a Jew’s] ethnic and ancestral identity.” First Am. Compl. at ¶ 99.

Rather than removing the perpetrators causing the hostile environment, MIT warned the victims to avoid certain areas of campus. *Id.* at *6. In addition, university officials permitted encampments to remain for extended periods of time and even went so far as installing “high fencing around the encampment.” Pet’rs’ App. 9a-12a. Notably missing from the First Circuit’s decision, MIT officials in the university’s Institute Discrimination & Harassment Response Office (IDHR) knew of these antisemitic events on campus and when approached by Jewish students for help, told the students that Jews were not members of a protected class. First Am. Compl. ¶ 205. *But see Shaare Tefila*, 481 U.S. 615, *supra*. An institution’s response must be reasonable, yet MIT’s response accommodated perpetrators while leaving Jewish students helpless – flipping Title VI on its head and eviscerating *Davis*.

Through its flawed reasoning, the First Circuit’s decision threatens all minorities, providing universities with a clear template for evading Title VI obligations. Consider the same pattern, but a different protected class. Imagine student groups position themselves to block entrances during Friday prayer times, carrying signs linking Islam to terrorism and chanting about “keeping campus safe from extremism” and demanded that the university monitor the Muslim Student Association for potential “security threats.”

After two weeks of Muslim students being blocked from attending prayers, the university might act, not

by enforcing its rules against the perpetrators, but by accommodating them. Perhaps the university agrees to form a task force examining “community concerns about campus security” and offers those blocking the doors a meeting with campus security officials to discuss their perspectives. The university might issue written warnings to a few protest leaders but allow them to continue attending classes and participating in campus activities. Meanwhile, Muslim and Arab students have spent weeks unable to freely practice their religion, facing harassment based on stereotypes linking their ethnic and religious identity to terrorism, and receiving the clear message that the university prioritizes accommodating their harassers over protecting their civil rights.

As MIT did here, any school in this hypothetical can avoid Title VI liability by taking minimal, delayed, and ineffective action that creates the appearance of a response while allowing hostile environments, harassment, and discrimination to persist. School officials can warn victims to modify their behavior rather than discipline perpetrators. They can accommodate perpetrators rather than enforce policies. They can study problems rather than solve them. The list goes on. The First Circuit’s framework renders Title VI’s protections illusory and will not only affect Jewish students, but also any minority group.

II. Political framing becomes a shield for harassment and discriminatory conduct.

The First Circuit conflated speech with conduct in

a way that enables perpetrators to create a hostile educational environment by shielding *unlawful* discriminatory and harassing behavior against a protected group and recasting it as political expression. But political motives do not immunize lawbreaking.

The First Amendment protects a broad range of expression, including speech that many find offensive, hateful, or deeply objectionable. However, the First Amendment does not protect unlawful conduct such as trespassing, vandalism, harassment, assault, and the destruction of property. In addition, the First Amendment does not protect true threats, which this Court defined as “statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). Nor does it protect intimidation, which is “a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360. Further, there is no First Amendment protection for speech that involves incitement, which this Court in *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (per curiam), explained includes speech that “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Id.* at 447.

Invoking political speech does not foreclose Title VI liability. This Court has emphasized that conduct creates a hostile educational environment when it becomes so severe, pervasive, and objectively offensive that it deprives students of equal access to educational opportunities. *Davis*, 526 U.S. at 561.

Consistent with *Davis*, courts evaluating hostile-environment claims do not end the inquiry merely because the underlying conduct contains some protected speech. Rather, the courts ask whether the cumulative effect of words and conduct is so severe, pervasive, and objectively offensive that it deprives students of equal access to educational opportunities. See, e.g., *Bryant v. Indep. Sch. Dist. No. I-38 of Garvin Cnty.*, 334 F.3d 928, 931–33 (10th Cir. 2003); *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 666 (2d Cir. 2012); *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 402–10 (5th Cir. 2015).

At MIT, perpetrators targeted Jewish students because of their actual or perceived connections to the State of Israel, even as they attempted to frame their behavior as criticism of Israeli government policies. However, their actions were not discourse or aimed at Israeli government officials or representatives. Their antisemitic chants and blockades were aimed at Jewish students and created hostile and unsafe conditions on campus for those Jewish students. See Pet’rs’ App. at 4a-6a, 9a-12a. However, because the perpetrators described their conduct as a “matter of public concern” the First Circuit treated their discriminatory conduct as speech protected by the First Amendment. This flawed First Amendment interpretation prescribes a mechanism that allows perpetrators to target minority groups whenever the perpetrators can identify a political issue connected to a minority’s identity.

Politically framing racial animus and harassment as protected speech improperly shields the university from conduct, otherwise illegal under Title VI, rendering the statute useless.

CONCLUSION

This Court should grant certiorari and reverse the decision below.

Respectfully submitted,

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